IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.97 OF 2003

1. Shri Gopal Kanso Sudhir,
son of Kanso Sudhir,
age 60 years, landlord.

2. Smt. Rama Gopal Sudhir,
wife of Petitioner No.1,
age years.

Both residing at H.No.490,
Ossorssim, Loliem,
Taluka Canacona, Goa. ..... Petitioners.

V/s.

Comunidade of Loliem,
represented through its
Attorney at Loliem,
Taluka, Canacona, Goa. ..... Respondent.

Mr. Sudesh M.S. Usgaonkar, Advocate for the petitioners.

Mr.V.R. Tamba, Advocate for the respondent.

CORAM : P.V. HARDAS, J.

DATE : APRIL 10,2003.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. By consent of the parties this petition is taken up for final hearing.

2. This petition is filed against the order passed by the learned Civil Judge, Jr. Division, Canacona, in Regular Civil Suit No.144/2000/New (old number Special Civil Suit No.48/98/Old), dated

30.12.2002, by which the learned trial Court dismissed the application filed by the petitioners/original plaintiffs under Order 7, Rule 14 and Section 151 of the Code of Civil Procedure, which is at Exhibit-18. By the said application at Exhibit-18, the plaintiffs prayed for permission to produce on record the documents referred to in the said application. Learned trial Court by the aforesaid order held that the plaintiff had not shown good or sufficient cause for production of the documents at that stage and, therefore, disallowed the plaintiffs to produce the documents and, accordingly, dismissed the application at Exhibit-18.

3. R & P has been called from the learned trial Court. On perusal of the R & P, Mr. Sudesh Usgaonkar, learned Counsel appearing on behalf of the petitioners has fairly stated that the filing of the application at Exhibit-18 by the petitioners/plaintiffs was wholly unnecessary as the petitioners/plaintiffs had produced the very same documents along with the plaint on 21.2.1998 and subsequently on 2.11.1998 at the stage of production of the documents. Mr. Usgaonkar has also fairly stated that it appears that this application at Exhibit-18 was filed through inadvertence as the petitioners/plaintiffs had omitted to take into consideration that the said documents had already been

produced earlier in the suit. On perusal of the record and proceedings of the trial Court, Mr. V. R. Tamba, learned Counsel appearing on behalf of the respondent/defendant, has also very fairly stated that it appears that the said documents had been produced by the petitioners/plaintiffs. In the peculiar facts and circumstances of the case, therefore, Mr. Usgaonkar, learned Counsel for the petitioners requests that the petitioners/plaintiffs be permitted to withdraw the application at Exhibit-18 as the documents sought to be produced under the application were in fact on the record of the trial Court. In the peculiar facts of the present case, therefore, I am inclined to permit the petitioners/plaintiffs to withdraw the said application.

4. In the result, therefore, the petitioners/ plaintiffs are permitted to withdraw the application at Exhibit-18 and consequently, the order impugned in the present petition is, therefore, quashed and set aside.

5. The petition, thus, succeeds. Rule made absolute on the above terms with no order as to costs. R & P be remitted to the learned trial Court, immediately.

P.V. HARDAS, J.